

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAKOTA CLAY AHLGRIM,

Plaintiff,

v.

No. CIV 12-1017 WPJ/CEG

LEONARD MANZANARES,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the United States Magistrate Judge's *Proposed Findings and Recommended Disposition* ("PFRD") filed on September 30, 2013, (Doc. 21), *Plaintiff's Objections to Magistrate Judge's Proposed Findings and Recommended Disposition* ("Objections") filed on October 10, 2013, (Doc. 24), and *Defendant's Response to Plaintiff's Motion for Default Judgment* filed on October 22, 2013, (Doc. 25). After fully considering and analyzing the parties' requests, the Magistrate Judge recommended that Defendant's *Motion for Leave to File Answer Out of Time*, (Doc. 15), be granted and that Plaintiff's *Motion for Default Judgment*, (Doc. 18), be denied.

Plaintiff does not directly object to any part of the Magistrate Judge's PFRD, but asks the Court to consider *Plaintiff's Response to Defendant's Reply to Plaintiff's Objection to Defendant's Motion for Leave to File Answer Out of Time* ("Surreply") filed on October 2, 2013, (Doc. 22), and *Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Default Judgment* ("Reply"), filed on October 2, 2013 (Doc. 23), because he contends they contain adequate argument to possibly change the Court's opinion. The

Surreply and Reply were filed out of time by nineteen days and after the PFRD was entered.¹ Plaintiff acknowledges that those briefs are untimely and explains that he initially mailed them to the wrong address. (Doc. 24 at 1).

Petitioner proceeds *pro se*, and the Court must liberally construe his filings. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008). Therefore the Court will construe the Reply as a Motion for Leave of Court to File a Reply Out of Time, and grant the motion because it is in the interests of justice to do so. Similarly, the Court will construe the Surreply as a Motion for Leave of Court to File a Surreply pursuant to D.N.M.L.R.-Civ. 7.4(b), and grant the motion because it is in the interests of justice to do so.

The Court has reviewed the Reply and Surreply and finds that they do not contain any arguments that would change the Magistrate Judge's analysis. None of the documents that Plaintiff has submitted contain any specific objections to the Magistrate Judge's analysis or factual findings in the PFRD. Those briefings merely set forth the same arguments Plaintiff already made regarding his opposition to Defendant's request to file his answer outside of time, and reasons Plaintiff contends he is entitled to default judgment on his claims. Those arguments were thoroughly considered by Judge Garza in the PFRD. (Doc. 21). The Court finds that the Magistrate Judge correctly understood and analyzed the parties' requests, and therefore Plaintiff's arguments are without merit.

Having conducted a *de novo* review of the filings, the PFRD, and Plaintiff's

¹ The Court follows the "prison mailbox" rule. For the prison mailbox rule to apply, Petitioner must show that he used the prison's legal mail system, or submit a declaration in compliance with 28 U.S.C. § 1746 or notarized statement setting forth the date of deposit with prison officials and attest that postage was prepaid. *Price v. Philpot*, 420 F.3d 1158, 1165 (10th Cir. 2005). The date of the prisoner's signature on the document establishes the date of delivery to prison mailroom personnel. See *Towns v. United States*, 190 F.3d 468, 469 (6th Cir. 1999). The Reply and Surreply do not indicate what day Plaintiff mailed the briefs to the Clerk of the Court's address, so the Court must defer to the date the Clerk received and entered the document.

Objections, the Court will adopt the PFRD.

IT IS HEREBY ORDERED THAT:

- (1) The Magistrate Judge's *Proposed Findings and Recommended Disposition* (Doc. 21) are **adopted**;
- (2) Defendant's *Motion for Leave to File Answer Out of Time*, (Doc. 15), is **granted**;
- (3) Plaintiff's *Motion for Default Judgment*, (Doc. 18), is **denied**;
- (4) Plaintiff's Motion for Leave of Court to File a Surreply, (Doc. 22), is **granted**;
and
- (5) Plaintiff's Motion for Leave of Court to File a Reply Out of Time, (Doc. 23), is **granted**.



HONORABLE WILLIAM P. JOHNSON
UNITED STATES DISTRICT JUDGE